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10/774,157

02/06/2004

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| EXAMINER |
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PHILOGENE, PEDRO

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| ART UNIT | PAPER NUMBER |
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3733

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08/21/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

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|--------------------------------------|---|--|
| Application No. 10/774,157 | Applicant(s) EISERMANN ET AL. | |
| Examiner Pedro Philogene | Art Unit 3733 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04 June 2007.
- 2a) This action is **FINAL**.
- 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3,5-25 and 27-40 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3,5-25,27-40 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

Art Unit: 3733

Allowable Subject Matter

The indicated allowability of claims 1-3,5-22,26-39 is withdrawn in view of the newly discovered reference(s) to Baccelli et al. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3,5-22,23-25, 27-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huppert et al. (WO 03/039400) in view of Baccelli et al. (6,454,805).

With respect to claims 1,22, 23,30, Huppert et al disclose a prosthetic device for anterior-oblique insertion into an intervertebral space, comprising a first component (112) comprising a first articular surface and opposed first bearing surface, a first flange (2') extending from the bearing surface, the first flange being angled relative to the to the longitudinal and transverse axes of the first components; as best seen in FIG.4, a projection (13) extending from the first articular surface; and a second component (111) comprising a second articular surface and an opposed second bearing surface; a second flange (2) extending from the second bearing surface the second flange being angled relative to the longitudinal and transverse axes of the second component; as best seen in FIG.4, as set forth in page 2, lines 2, 6, 16-24, page 6, lines 9-13, page 7, lines 11-19, 29-31 a recess, as best seen in FIG.3, formed in the second articular

Art Unit: 3733

surface, the recess being adapted to engage with the projection to provide for articulating motion between the first and second components.

With respect to claims 2-3,5-21,24,25, 27-29,37-39, Huppert et al disclose all the limitations; as set forth; for example, the flange adapted to be positioned within a preformed anterior-oblique opening, as best seen in FIG.4.

It is noted that Huppert et al did not teach of a first component that is triangular in shape to define first, second and third side portions; as claimed by applicant. However, in a similar art, Bacdelli et al, column 2, lines 62-65, column 3, lines 21-23, evidence the use of a first component that is triangular in shape to define first second and third side portions in order to insure stable bone fusion.

With respect to claims 30-36,40, the method steps, as set forth, would have been obviously carried out in the operation of the device, as set forth above.

Response to Amendment

Applicant's arguments with respect to claims 23-25 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

A shortened statutory period for reply to this action is set to expire THREE MONTHS from the mailing date of this action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

Art Unit: 3733

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene
August 17, 2007


PEDRO PHILOGENE
PRIMARY EXAMINER